IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 527 of 1992

Date of Decision :- March 21, 2007

Piara Singh ....PETITIONER

VERSUS

State of Punjab ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL

Present:- Mr. Gaurav Chopra, Advocate
for the petitioner.

Mr. J.S.Dhillon, DAG Punjab.

MEHTAB S.GILL, J.

This is a revision against the judgment dated 14.7.1992 of the Additional Sessions Judge, Ferozepur, affirming the judgment dated 4.5.1990 of the Judicial Magistrate 1st Class, Zira, whereby he convicted Piara Singh son of Bishan Singh under Section 61(1)(a) of the Punjab Excise Act and sentenced him to undergo R.I. for one year and to pay a fine of Rs.1,000/-, in default to further undergo R.I. for two months.

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The case of the prosecution is that ASI Jalour Singh, along with the police party went for patrolling and when they reached near Village Kassoana, petitioner Piara Singh was caught with two gunny bags. On searching the gunny bags, 85 bottles of illicit liquor were found in the first gunny bag, whereas 99 bottles of illicit liquor, in the second. Sample of 180 mls. each was taken from the two tubes, which were in the gunny bags. Seal bearing impression 'JS' was put. Ruqa Ex.PB was sent to the police station, on the basis of which FIR Ex.PB/1 was recorded.

The prosecution to prove its case brought into the witness box Constable Raghbir Singh as PW1, ASI Jalour Singh as PW2 and Constable Harjinder Singh as PW3.

Learned counsel for the petitioner has argued, that the police did not join any independent witness, though they were available. Constable Raghbir Singh PW1 has admitted, that there were a number of persons, who were crossing nearby, but they did not ask anyone to join, when the documents of the recovery of the two bags were being prepared.

Learned counsel for the petitioner has further argued, that one Ajaib Singh had been arrested on the same allegation, but in that case the learned Judicial Magistrate 1st Class, Zira, vide his order dated 30.10.1990 did not believe the testimony of ASI Jalour Singh. ASI Jalour Singh is also a witness in this case and his testimony should not be believed.

Learned counsel for the State has argued, that non joining of an independent witness does not affect the prosecution case in any manner. The learned Additional Sessions Judge has rightly held, that in those days, when there was a lot of disturbance in the State of Punjab, no one from the

public was willing to join as a witness. Judgment in the case of one Ajaib Singh was pronounced on 30.10.1990, in which ASI Jalour Singh was a witness, but the judgment in this case was pronounced on 4.5.1990. Both the cases cannot be compared, as they were two different accused and the places of recovery and the occurrence are also different.

I have heard the learned counsel for the parties, perused the impugned judgments and the record with their assistance.

Non-joining of an independent witness does not render the case of the prosecution to be false. The learned Additional Sessions Judge has rightly held, that when the recovery was made in the year 1988, there was a law and order problem in the State of Punjab. No one from the public at that time was willing to become a witness of the police. Both the cases of one Ajaib Singh and the present petitioner have the same set of witnesses, but two different sets of recovery of illicit liquor have been made; one from Ajaib Singh and another from the present petitioner Piara Singh. The case of Ajaib Singh was decided on 30.10.1990 and ASI Jalour Singh was not believed. In the present case, petitioner Piara Singh has been convicted. Both these cases do not have similar circumstances and the learned Additional Sessions Judge has rightly held the petitioner guilty.

I do not find any infirmity in the judgment of the learned Additional Sessions Judge, Ferozepur.

FIR was registered in the year 1988 and revision in this Court was filed in the year 1992. The sword of conviction is hanging over the head of the petitioner for the last 19 years. This itself is a punishment.

Ends of justice would be met if the sentence of the petitioner is modified to that already undergone.

With the above modification in sentence, revision petition is dismissed.

March 21, 2007 **(MEHTAB S.GILL)**
S.K.Arora **JUDGE**